Goulding J in *Sega Enterprises Ltd* v *Richards*.[9] Full arguments were not advanced before us; but we were content with our interlocutory view that the questions whether copyright in the CAI system had subsisted under the 1911 Act and whether there were infringements by the respondent were also serious questions which had to be fully canvassed and tried.

The fourth and final ground of appeal related to the learned judge's several conclusions when considering this interlocutory matter under the broad classification of 'balance of convenience'. Counsel for the appellants submitted that the learned judge had fallen into several errors, namely (a) in finding that no impropriety on the part of the respondent had been shown; (b) in concluding that the appellants' claim 'was a highly contentious claim'; (c) in concluding that the respondent's business would be brought to a standstill; and (d) in finding that the case was 'pre-eminently a case for damages'. In setting out the affidavit evidence in the way we have done, we have, in our view, sufficiently shown that the appellants were plainly right in respect of submissions (a) and (b). As to submission (c), there was affidavit evidence, which was not really controverted, that Datum had developed other computer programs, namely, the Traffic Measurement Systems which they had sold to Singapore Telecoms and which they could continue to market. Datum could continue with their business and the respondent his employment with them.

Finally, we were unable to accept the finding of the learned judge that this was 'pre-eminently a case for damages'. Damages would have been difficult to assess, as it would be difficult to establish a correlation between any drop in the sales of the appellants with the alleged infringements and alleged breaches of fiduciary duties of fidelity and confidence. The appellants had over three and a half years developed their CAI system, and had incurred expenses doing so. The learned judge had enjoined the respondent from using the trade secrets and confidential information relating to the CAI system and there was no warrant why the respondent should not have been additionally enjoined not to copy or adapt the appellants' CAI system in Datum's TMS, TMS-II or any other adaptation of any of the appellants' CAI's system.

For all these reasons, we made the orders we did.

Appeal allowed.

Solicitors: *Allen & Gledhill; Palakrishnan & Partners.*

Reported by *Zarinah Marican*

Huang Ching Hwee v Heng Kay Pah & Anor

COURT OF APPEAL (SINGAPORE) — MOTION IN CIVIL APPEAL NO 128 OF 1990
YONG PUNG HOW CJ, LAI KEW CHAI AND RAJENDRAN JJ
5 AUGUST 1991

Civil Procedure — Appeal — Fresh evidence — Whether can be adduced

The appellant had given to the respondents an option to purchase property which was later exercised. The sale and purchase was to be completed on 24 August 1990 but the respondents discovered that the appellant had carried out renovation works which the respondents contended required planning approval and no approval had been given. The respondents considered that these unauthorized works would constitute a grave and serious misrepresentation as to quality of a fundamental character and they gave notice on 21 August 1990 that they would not complete the purchase of the property.

The appellant subsequently took out an originating summons for, inter alia, a declaration that the respondents were not entitled to rescind the contract contained in the option. The summons was dismissed (see [1991] 2 MLJ 15) and the appellant appealed to the Court of Appeal. After the hearing of the originating summons, the respondents' solicitors received a letter from the Director-General of Public Works which they believe would dispose of a possible major contention of the appellant in the forthcoming appeal against the judgment in the originating summons. The respondents therefore filed a motion in the Court of Appeal for special leave to adduce the evidence of the letter, upon the hearing of the appeal.

Held, allowing the motion:

The letter which the respondents wish to adduce was not in existence at the hearing of the originating summons. One of the issues in the appeal proper is whether the approval of the building authority is required for the renovation works. The letter states that plans have been submitted for consideration of approval. The conditions of *Ladd* v *Marshall*[1] are satisfied, because the evidence of the letter could not have been obtained with reasonable diligence. It would have an important influence on the result of the case and is apparently credible.

Cases referred to

1 *Ladd* v *Marshall* [1954] 3 All ER 745 (folld)
2 *Skone* v *Skone & Anor* [1971] 2 All ER 582 (refd)

Foo Soon Yien for the appellant.
Berny Johns for the respondents.

Cur Adv Vult

Yong Pung How CJ (delivering the judgment of the court): This was an application by the respondents to adduce further evidence under O 57 r 13(2) of the Rules of the Supreme Court 1970 ('RSC') which provides:

> The Court of Appeal shall have power to receive further evidence on questions of fact, either by oral examination in Court, by affidavit, or by deposition taken before an examiner, but, in the case of an appeal from a judgment after

trial or hearing of any cause or matter on the merits, to such further evidence (other than evidence as to matters which have occurred after the date of trial or hearing) shall be admitted except on special grounds.

The facts in so far as they were relevant to this appeal were these. On 11 May 1990, an option to purchase the property known as No 4 Joan Road for $2.5m was given by the appellant to the respondents for $25,000. On 1 June 1990, the option was exercised and $225,000 was paid to the appellant's solicitors as stakeholders. The sale and purchase was to be completed on 24 August 1990. From 12 June 1990 to 21 August 1990, there was correspondence between the appellant's and the respondents' solicitors. The correspondence concerned, inter alia, renovation works which the appellant was alleged to have carried out. The appellant claimed that the renovation works concerned the interior of the property, that he did not have approved plans and, in any case, approval was not needed from the relevant authority.

The respondents contended that the replies to their requisitions and the inquiries which they made disclosed that substantial works had been carried out since 1985 and that these works required planning approval, but planning approval had not been obtained. As they considered that these unauthorized works would constitute a grave and serious misrepresentation as to quality of a fundamental character, the respondents gave notice on 21 August 1990 that they would not complete the purchase of the property, and they demanded the return of the $250,000 paid by them, of which $25,000 had been paid to the appellant and $225,000 was held by the appellant's solicitors as stakeholders.

On 28 August 1990, the appellant took out an originating summons for, inter alia: (1) a declaration that the respondents were not entitled to rescind the contract contained in the option dated 11 May 1990; (2) a declaration that the appellant was entitled to forfeit the 10% deposit of $250,000 paid under the option; and (3) an order for specific performance of the contract. The originating summons was heard on 12 November 1990 and judgment was given on 7 December 1990, dismissing the appellant's summons with costs. The appellant has appealed to this court.

After the originating summons was heard, the respondents' solicitors received a letter from the Director-General of Public Works, Singapore dated 3 January 1991 which is reproduced below.

Your ref : BJ/SK/352/90
Our ref : PWD BCD ENF 789/90

Date : 3 January 1991

M/s Johns & Co
7500A Beach Road #13-303
The Plaza
Singapore 0719

Dear Sir

No 4 Joan Road, Singapore

Further to our letter dated 1 November 1990, please be informed that plans for retention of additions and alterations to the above premises have been submitted to the Building Control Division for consideration of approval.

2 Pending the outcome of the submission, further enforcement action is being withheld for the time being by our division.

Yours faithfully
Signed
Mohd Yusoff
Building Control Division
for Director-General of Public Works
Singapore

As the respondents were of the view that the evidence of this letter could well dispose of a possible major contention of the appellant in the forthcoming appeal against the judgment in the originating summons, the respondents filed a motion in the Court of Appeal that they be at liberty to apply to the court upon the hearing of the appeal for special leave to adduce the evidence of this letter, in addition to the evidence before the court below.

The grounds in support of the application to adduce this letter were set forth in an affidavit by the respondents' solicitors. It was contended by the respondents that on 23 August 1990, two days after the respondents rescinded the contract contained in the option, their solicitors had written to the Director-General of Public Works requesting confirmation as to whether the various works carried out on the property required approval. After writing the letter the solicitors had telephoned the Building Control Division of the Public Works Department a number of times to request an early response but had been told each time that the complaint was being looked into and that only on completion of investigation would the outcome be made known to the solicitors. The letter from the Director-General of Public Works dated 3 January 1991 was in fact received on 10 January 1991, and the evidence contained in the letter was therefore unavailable on 12 November 1990 when the originating summons was heard before the court below. Counsel for the respondents submitted that the evidence which the respondents proposed to adduce through the letter would enable the Court of Appeal to discover the truth in the first main issue of the appeal. This was whether the appellant's renovation works required the approval of the building authority and, if they did, and if no approval was obtained, whether that would constitute a defect in title entitling the respondents to rescind.

Counsel for the respondents relied on the case of *Ladd* v *Marshall*[1] and in particular, on the passage by Denning LJ at p 748:

It is very rare that application is made to this court for a new trial on the ground that a witness has told a lie. The principles to be applied are the same as those always applied when fresh evidence is sought to be introduced. In order to justify the reception of fresh evidence or a new trial, three conditions must be fulfilled; first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive; third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible.

He also referred to *Skone* v *Skone & Anor.*[2]

Counsel for the appellant submitted that the letter could have been obtained with reasonable diligence for use at the hearing; even if this was not possible, the respondents could have indicated to the judge at the hearing of the originating summons in the court below that such a reply from the Director-General of Public Works was important but had not been received, and the hearing could have been adjourned.

We allowed the application. The exact arguments of counsel for the respondents on this letter which may be raised in the appeal proper need not concern us here, and our comments herein are without prejudice to the appeal proper. The letter which the respondents wish to adduce is dated 3 January 1991. It was not in existence at the hearing of the originating summons on 12 November 1990. One of the issues in the appeal proper is whether the approval of the building authority is required for the renovation works. The letter states that plans have been submitted for consideration of approval. In the present case, the conditions of *Ladd* v *Marshall*[1] are satisfied, because in our opinion the evidence of the letter could not have been obtained with reasonable diligence. It would have an important influence on the result of the case and is apparently credible. The application was allowed with costs in the cause.

Application allowed.

Solicitors: *Bernard Rada & Lee; Johns & Co.*

Reported by *Zarinah Marican*

Er Boon Huai & Anor v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) — CRIMINAL APPEAL NO 6 OF 1991
YONG PUNG HOW CJ, LAI KEW CHAI AND RAJENDRAN JJ
5 AUGUST 1991

Criminal Procedure — Sentence — Additional term of imprisonment imposed in lieu of caning — Term of imprisonment more than that of co-accused — Whether justified — Criminal Procedure Code (Cap 68, 1985 Ed), s 231

The two appellants had pleaded guilty to a charge of trafficking in diamorphine, an offence under s 5(a) of the Misuse of Drugs Act (Cap 185, 1985 Ed). The first appellant was sentenced to 24 years of imprisonment and 15 strokes of the cane. The second appellant, who was more than 50 years old on the date of the conviction, could not be punished with caning. He was given an additional three years of imprisonment in lieu of the caning and was therefore sentenced to 27 years of imprisonment. Both appellants appealed against sentence.

Held, dismissing the first appellant's appeal and allowing the second appellant's appeal:

(1) Bearing in mind the quantity of drugs involved and the minimum and maximum sentences prescribed by law, the sentence of 24 years' imprisonment and 15 strokes of the cane imposed on the first appellant could not be said to be manifestly excessive.

(2) Section 231 of the CPC places the three categories of persons stated therein in a special position in that any provision in any law imposing a liability to caning would not be applicable to such persons. Therefore, unlike the first appellant, the maximum penalty that the second appellant was liable for was 30 years' imprisonment (without any caning) and the minimum penalty was 20 years' imprisonment (without any caning). The additional three years' imprisonment imposed on the second appellant in lieu of the caning cannot be justified, as the second appellant, in the absence of any facts to distinguish his case from that of the first appellant's, must be sentenced to the same term of imprisonment as the first appellant for this offence. A term of imprisonment of 24 years from the date of his arrest was therefore ordered.

Legislation referred to
Criminal Procedure Code (Cap 68, 1985 Ed) s 231
Misuse of Drugs Act (Cap 185, 1985 Ed) ss 5(a), 33

Appellants in person.
Jasvender Kaur for the Public Prosecutor.

Cur Adv Vult

Rajendran J (delivering the judgment of the court): The two appellants had on 25 March 1991 pleaded guilty to the following charge:

> You, Er Boon Huai and Lai Ah Kau, are charged that between 11.45am and 11.55am on 27 April 1988, in furtherance of the common intention of you both, did traffic in a controlled drug specified in 'Class A' of the First Schedule to the Misuse of Drugs Act (Cap 185, 1985 Ed) by transporting 3 packets containing a total of not less than 10g and not more than 15g of diamorphine in motor car PBE 9696 from the carpark at Block 75, Pipit Road, to the